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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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ARTHUR LEE GIBSON,

7

Plaintiff,

8

v.

9

J. LEWIS, et al.,

10

Defendants.

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Case No. [17-cv-03995-JD](#)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

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13 Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.  
14 He has been granted leave to proceed in forma pauperis.

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**DISCUSSION**

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**STANDARD OF REVIEW**

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18 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
19 § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims  
20 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
21 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se  
22 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
23 Cir. 1990).

24

25 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed  
26 factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to  
relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a  
27 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above  
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1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations  
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its  
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”  
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they  
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court  
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement  
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by  
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was  
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **LEGAL CLAIMS**

12 Plaintiff states that he was notified of a potential breach regarding his personal health  
13 information. A laptop computer that may have included plaintiff’s health information was stolen  
14 out of a car of a prison health care worker. The computer was password protected but was not  
15 encrypted. Plaintiff seeks money damages.

16 Plaintiff has failed to state a cognizable claim because he has not identified a right secured  
17 by the Constitution or laws of the United States that was violated. To demonstrate a violation of  
18 the Eighth Amendment with respect to medical care, plaintiff must demonstrate that defendants  
19 were deliberately indifferent to his serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104  
20 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,  
21 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

22 To the extent plaintiff is asserting a violation of his health privacy; he is not entitled to  
23 relief. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-  
24 191, 110 Stat. 1936 (codified as amended in scattered sections of 42 U.S.C.) “provides for no  
25 private right of action.” *Webb v. Smart Document Solutions*, 499 F.3d 1078, 1080 (9th Cir. 2007);  
26 *see, e.g., Seaton v. Mayberg*, 610 F.3d 530, 533 (9th Cir. 2010) (citing *Webb* and dismissing  
27 prisoner’s claim under HIPAA for disclosure of his medical records). Plaintiff assertion that  
28 potential release of his medical information due to theft violated his constitutionally-protected

1 privacy rights fails to state a claim because “prisoners do not have a constitutionally protected  
2 expectation of privacy in prison treatment records when the state has a legitimate penological  
3 interest in access to them.” *Seaton*, 610 F.3d at 534.

4 The complaint is dismissed with leave to amend to set forth a federal claim. If plaintiff  
5 cannot present a federal claim he should proceed with this action in state court. Plaintiff indicates  
6 that he filed a state court action but it is not clear if that action continues.

7 **CONCLUSION**

8 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must  
9 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption  
10 and civil case number used in this order and the words AMENDED COMPLAINT on the first  
11 page. Because an amended complaint completely replaces the original complaint, plaintiff must  
12 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th  
13 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to  
14 amend within the designated time will result in the dismissal of this case.

15 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
16 Court informed of any change of address by filing a separate paper with the clerk headed “Notice  
17 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to  
18 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
19 Civil Procedure 41(b).

20 **IT IS SO ORDERED.**

21 Dated: November 7, 2017

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JAMES DONATO  
United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARTHUR LEE GIBSON,  
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Case No. 17-cv-03995-JD

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 7, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Arthur Lee Gibson ID: K-50648  
San Quentin State Prison  
San Quentin, CA 94974

Dated: November 7, 2017

Susan Y. Soong  
Clerk, United States District Court

By: Lisa R. Clark  
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO